UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ALLIANZ GLOBAL RISKS U.S. INSURANCE COMPANY, as subrogee of Buffets Holdings, Inc.,

Plaintiff,

vs.

NOVAK CONSTRUCTION COMPANY, an Illinois corporation,

Defendant,
Third Party Plaintiff,

vs.

RESTAURANT SPECIALTIES, INC., KIEFFER & CO., INC. and AERO ELECTRIC & COMMUNICATIONS,

Third Party Defendants.

No. 07 C 7149

Judge Samuel Der-Yeghiayan

DEFENDANT RESTAURANT SPECIALTIES, INC.'S ANSWER TO PLAINTIFF'S CORRECTED AMENDED COMPLAINT

NOW COMES Defendant, RESTAURANT SPECIALTIES, INC. ("RSI"), through its attorneys, WIEDNER & McAULIFFE, LTD., and for its Answer to Plaintiff's Corrected Amended Complaint states as follows:

FACTUAL ALLEGATIONS

1. At all relevant times, Buffets owned and operated an Old Country Buffet restaurant located at 445 East Palatine Road, Arlington Heights, Illinois (hereinafter, the "Restaurant").

ANSWER: RSI admits that at all relevant times an Old Country Buffet Restaurant was operated at 445 E. Palatine Road, Arlington Heights, IL. RSI has insufficient knowledge to respond to the remaining allegations of paragraph 1 and therefore neither admits nor denies them.

2. The Restaurant was located in a shopping mall owned by the Town & Country Plaza.

ANSWER: RSI admits the allegations of paragraph 2.

3. This action arises from a fire at the Restaurant on or about March 12, 2006.

ANSWER: RSI admits the allegations of paragraph 3.

4. At all relevant times, Defendant Novak Construction was an Illinois corporation engaged in providing general contracting services, with its principal place of business at 3423 N. Drake Avenue, 2nd Floor, Chicago, Illinois 60618.

ANSWER: RSI has insufficient knowledge to respond to the allegations of paragraph 4 and therefore neither admits nor denies them.

5. At all relevant times, Defendant Restaurant Specialties, Inc. ("RSI") was an Ohio corporation engaged in providing construction services with its principal place of business located in Columbus, Ohio.

ANSWER: RSI admits the allegations of paragraph 5.

6. At all relevant times, Defendant Kieffer & Co., Inc. ("Kieffer") was a Wisconsin corporation engaged in providing construction services with its principal place of business located in Sheboygan, Wisconsin.

ANSWER: RSI has insufficient knowledge to respond to the allegations of paragraph 6 and therefore neither admits nor denies them.

7. At all relevant times, Defendant Aero Electric & Communications ("Aero") was an Illinois corporation engaged in providing construction services with its principal place of business located in Loves Park, Illinois.

ANSWER: RSI admits the allegations of paragraph 7.

8. At all relevant times, Defendant Midwest Sign & Lighting, Inc. ("Midwest") was an Illinois corporation engaged in providing construction services with its principal place of business located in Country Club Hills, Illinois.

ANSWER: RSI has insufficient knowledge to respond to the allegations of paragraph 8 and therefore neither admits nor denies them.

9. Prior to March 12, 2006, Town & Country hired Defendant Novak Construction to act as the general contractor in a remodeling project at the shopping center, including work on the Buffets location.

ANSWER: RSI admits the allegations of paragraph 9.

10. During the course of construction, it became necessary to remove signage for the Buffets restaurant.

ANSWER: RSI admits that in the course of construction work during the remodeling of the Town & Country Mall the exterior sign for the Old Country Buffet Restaurant was removed. RSI further states that it was not involved in the remodeling work and more specifically the removal of exterior signage.

11. Novak Construction and/or another contractor working under their direction removed the signage without locking out the circuit for the sign.

ANSWER: RSI has insufficient knowledge to respond to the allegations of paragraph 11 and therefore neither admits nor denies them.

12. The circuit was later reenergized, resulting in a fire at the Restaurant.

ANSWER: RSI admits that there was a fire at the Old Country Buffet Restaurant and has insufficient information to respond to the remaining allegations of paragraph 12.

13. As a result of that fire, Buffets suffered damages in an amount in excess of the jurisdictional limit, $75,000.00.

ANSWER: RSI has insufficient knowledge to respond to the allegations of paragraph 13 and therefore neither admits nor denies them.

14. Plaintiff Allianz provided property insurance to Buffets pursuant to Policy No. 3005711.

ANSWER: RSI has insufficient knowledge to respond to the allegations of paragraph 14 and therefore neither admits nor denies them.

15. As a result of the March 12, 2006 fire damage, Buffets made a claim to Allianz under Policy No. 3005711.

ANSWER: RSI has insufficient knowledge to respond to the allegations of paragraph 15 and therefore neither admits nor denies them.

16. Pursuant to its policy of insurance, Allianz was required to pay and did pay to Buffets an amount in excess of $75,000.00.

ANSWER: RSI has insufficient knowledge to respond to the allegations of paragraph 16 and therefore neither admits nor denies them.

17. With that payment, Allianz has become subrogated to the rights of Buffets to the extent of such payment.

ANSWER: RSI has insufficient knowledge to respond to the allegations of paragraph 17 and therefore neither admits nor denies them.

COUNT I – NEGLIGENCE OF NOVAK CONSTRUCTION

As the allegations of Count I are not made against RSI no response is made thereto.

COUNT II – NEGLIGENCE OF RESTAURANT SPECIALTIES, INC.

26. Allianz hereby incorporates by reference paragraphs 1 through 25 as if fully stated herein.

ANSWER: RSI incorporates its responses to paragraphs 1-25 as its response to paragraph 26.

27. At all relevant times, Defendant Restaurant Specialties, Inc. ("RSI") was responsible for performing construction services at the Buffets restaurant.

ANSWER: RSI admits that it was responsible for performing certain construction services at the Old Country Buffet Restaurant pursuant to its contract with OCB Restaurant Company, LLC and further states that the contract speaks for itself.

28. In performing those construction services, RSI owed a duty to Buffets to act in a safe, careful and workmanlike manner.

ANSWER: RSI admits all duties imposed at law and denies that the allegations of paragraph 28 accurately state any such duty.

29. RSI breached its duty to Buffets through the following acts and/or omissions constituting negligence, including but not limited to:

a. improperly removing the signs;

b. failing to inspect the circuit following the removal of the signs to ensure that it was properly locked out;

c. failing to warn Buffets that the sign was improperly removed, so that it could act accordingly to prevent damage to property;

d. failing to observe applicable safety standards in the removal of the sign;

e. failing to properly train its employees in the removal of signs;

f. failing to take all reasonable and necessary precautions to prevent the fire;

g. failing to supervise its employees with respect to the removal of the sign;

h. failing to use due care and safety in performing its work;

i. violating federal, state and local codes, statutes and/or ordinances;

j. any and all other acts and/or omissions constituting negligence, which become known through the course of discovery.

ANSWER: RSI denies the allegations of paragraph 29 and each of its subparts.

30. As a direct and proximate result of RSI's negligence, Buffets suffered damage in an amount in excess of $75,000.00.

ANSWER: RSI denies the allegations of paragraph 30.

31. As a result of this damage, Buffets made a claim to Allianz.

ANSWER: RSI has insufficient knowledge to respond to the allegations of paragraph 31 and therefore neither admits nor denies them.

32. Pursuant to its policy of insurance, Allianz was required to pay and did pay to Buffets an amount in excess of $75,000.00.

ANSWER: RSI has insufficient knowledge to respond to the allegations of paragraph 32 and therefore neither admits nor denies them.

33. With that payment, Allianz has become subrogated to the rights of Buffets to the extent of such payment.

ANSWER: RSI has insufficient knowledge to respond to the allegations of paragraph 33 and therefore neither admits nor denies them.

WHEREFORE, Defendant RESTAURANT SPECIALTIES, INC., prays for judgment in its favor and against Plaintiff, ALLIANZ GLOBAL RISKS U.S. INSURANCE COMPANY, and that costs be awarded.

COUNT III – NEGLIGENCE OF KIEFFER & CO., INC.

As the allegations of Count III are not made against RSI no response is made thereto.

COUNT IV – NEGLIGENCE OF AERO ELECTRIC & COMMUNICATIONS

As the allegations of Count IV are not made against RSI no response is made thereto.

COUNT V – NEGLIGENCE OF MIDWEST SIGN & LIGHTING, INC.

As the allegations of Count V are not made against RSI no response is made thereto.

Respectfully submitted,

WIEDNER & McAULIFFE, LTD.,

s/Timothy D. McMahon .
Attorney for Defendant, Restaurant Specialties, Inc.

AFFIDAVIT

NOW COMES Defendant, Restaurant Specialties, Inc., by and through its attorneys, WIEDNER & McAULIFFE, LTD., and states that it is without sufficient knowledge to either admit or deny the allegations contained in paragraphs 1, 4, 6, 8, 11, 13-17 of the Factual Allegations; and paragraphs 31-33 of Count II of Plaintiff's Complaint.

s/Timothy D. McMahon .
Attorney for Defendant, Restaurant Specialties, Inc.

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